

### Remarks

Applicant has amended claims 1, 2, 22 and 25, and added new claims 43-46 to further distinguish Applicant's claimed invention, and to enable allowance of the claims. Support for these claim amendments may be found on page 10, lines 3 through page 11, line 12, as well as in Figures 6-8 of the applicant's application as filed.

In response to the rejections of applicant's claims 1-42 under 35 U.S.C. § 103(a), applicant provides a summary of the present invention and presents a reasoned analysis and factual inquiry under the factors presented in *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1 (1966) to establish a case of nonobviousness. The factual inquiries enunciated in *Graham* include:

- A. Determining the scope and content of the prior art;
- B. Ascertaining the differences between the prior art and the claims in issue;
- C. Resolving the level of ordinary skill in the pertinent art; and
- D. Evaluating evidence of secondary considerations.

### ***Summary of Applicant's Invention***

The present invention provides an automated computer-implemented method for determining whether a loan file, either in a loan origination system of a lending institution or inputted by a user, is in compliance with federal, state and other jurisdictional requirements. These requirements place limitations on allowable range of compliance rule data elements contained in a loan origination file, such as interest rates, points and closing fees, contained in a loan origination file that loan originators may use when processing and closing a loan. These requirements also dictate that certain state, federal and other jurisdictional licenses to be held by participating parties in the loan origination process, as indicated by entries in the loan origination

file. These strict requirements are placed on loan origination entities for protection of loan applicants, and are enforced by various penalties including fines and loss of applicable licenses. See the applicant's specification, page 2, line 17 through page 4, line 10.

The automated compliance system is first initialized with computer-encoded compliance rules, 13 in Figure 1, derived from licensing requirements, laws and regulations applicable to the local jurisdiction. The computer encoded compliance rules comprise computer-implemented mathematical equations using compliance based rule variables and algebraic operands that are derived from and represent government loan lending and licensing requirements. Loan data comprising compliance base rule data elements, capable of being entered into computer-implemented mathematical equations, from a loan origination file or user input are also entered into the system. In response to an auditing request, data fields in the compliance rules comprising compliance base rule variables are automatically populated with the compliance base rule data elements for determining an audit compliance result. The data automatically populating the compliance base rule variables data fields are compliance base rule data elements that may be automatically extracted from a loan file contained in a loan origination system and transmitted to a loan audit server, 121 in Figure 11 of applicant's specification as filed. The computer-coded compliance rules shown as 13 in Figure 1 and 123 in Figure 11 are applied to the loan audit data for generating a loan audit result by inserting the compliance base rule data elements from the loan audit data into the compliance base rule variables of the compliance rules and executing the encoded rule. Compliance is automatically determined by applying the compliance base rule data elements in the loan file data fields, 11 in Figure 1, to the compliance base rule variables of the computer-coded compliance rules shown as 13 in Figure 1, for determining a loan audit compliance result. This application of the compliance base rule data elements from the loan

audit data file to the compliance base rules variables of the compliance rules by the loan audit engine, shown as 12 in Figure 1 and 121 in Figure 11, and determines whether the loan data file meets all the regulatory requirements placed on each individual loan that is processed by a loan origination entity such as a mortgage company or bank. The application of the computer encoded compliance rules to the compliance base rule data elements determines, for example, if the interest rate charged on a loan is within Federal Consumer protection guidelines for the particular type of loan. It may also be determined if the fees charged by a property appraiser, loan originator, real estate agent, title company, etc exceed government limits. Once the compliance rules for a particular lender and lender jurisdiction have been determined, all loan data files by the lender in that jurisdiction may be processed using these same rules by a loan audit engine shown as 12 in Figure 1, to produce loan audit results shown as 15 in Figure 1. The loan audit result, 15 in Figure 1, of the compliance assessment is returned to the user/requestor or the loan origination system of the lending institution.

A typical embodiment of Applicant's invention is computer-implemented method for auditing loan compliance with government loan lending and licensing requirements, comprising the computer-implemented steps of (1) receiving loan application data including compliance base rule data elements capable of being entered into computer-implemented mathematical equations as shown as 11 in Figure 1; (2) receiving loan compliance rules comprising computer-implemented mathematical equations using compliance base rule variables and algebraic operands that are derived from and represent the government loan lending and licensing requirements shown as 13 in Figure 1, 23-26 in Figure 2, 61 in Figure 6 and 81 in Figure 8; (3) applying a selected set of the loan compliance rules to the loan application data by inserting the compliance base rule data elements from the loan application data into the compliance base rule

variables of the compliance rules for determining a loan audit compliance result, shown as 12 in Figure 2; and (4) notifying a user of the determined loan audit compliance result.

An alternative embodiment is a computer-implemented system and method for auditing loan compliance that includes the computer-implemented steps of: (1) allowing a user to display, enter and edit loan audit compliance data comprising base rule data elements, capable of being entered into computer-implemented mathematical equations, on a computer user interface shown as 21 in Figure 2 and store the loan audit compliance data in a loan data database; (2) allowing a user to interactively build loan compliance rules on a computer user interface comprising computer-implemented mathematical equations using compliance base rule variables and algebraic operands that are derived from and represent the government loan lending and licensing requirements, shown in Figures 6-8, and to store the loan compliance rules in a loan compliance rules database, shown as 23 in Figure 2; (3) responding to a loan audit request by retrieving the stored loan compliance rules and stored loan audit data, applying the loan compliance rules to the loan audit data by the loan audit engine, shown as 12 in Figure 2, for inserting the compliance base rule data elements from the loan audit data into the compliance base rule variables of the compliance rules for determining a loan audit compliance result, and (4) notifying a user of the loan audit compliance result.

Yet another embodiment is a computer-implemented system and method for auditing loan compliance that includes the computer-implemented steps of: (1) electronically transferring loan audit compliance data including compliance base rule data elements, capable of being entered into computer-implemented mathematical equations, over a communications network, shown as 124 in Figure 11, from a user, shown as 125 in Figure 11, to a loan audit server computer, shown as 121 in Figure 11; (2) applying loan compliance rules, shown as 123 in

Figure 11, comprising computer-implemented mathematical equations using compliance base rule variables and algebraic operands that are derived from and represent the government loan lending and licensing requirements to the loan audit compliance data; (3) populating the compliance base rule variables of the compliance rules with the compliance base rule data elements from the loan audit data to determine a loan audit compliance result; and (4) electronically transferring the loan audit compliance result from the loan audit server computer to the user, shown as 125 in Figure 11, over the communications network.

#### ***A. Determining the Scope and Content of the Prior Art***

The single prior art reference cited in support of the 35 U.S.C. § 103(a) rejections of all applicant's claims 1-42 in the Office Action of February 7, 2007 was U.S. Patent No. 6,643,625 by Acosta et al. This reference provides a computer-assisted method for auditing of loan portfolios by keying questions which determine compliance with legal requirements to a set of selectable audit types. When an audit type is selected, the system uses sampling methods to select a set of loans of that type to audit, and generates a checklist comprising a set of questions keyed to the particular audit type.

One disclosed embodiment of the Acosta reference is a client-server computer system for auditing loan and loan servicing portfolios comprising client workstations for use by loan auditors and a server for storing loan origination records for each loan origination and loan servicing portfolio. The system includes (1) rules which comprise each current and historical legal regulation and any investor-specific applicable parameters applicable to each type of loan. The system also includes (2) a set of sampling criteria, (3) a set of questions to determine compliance with each of the regulations and parameters, where each question is keyed to one or more audit types, (4) a set of selectable audit types and (5) a computer program adapted to

automatically select an audit sample subset of loan origination records or loan servicing records according to audit types and sampling criteria. (6) The program then automatically creates and transmits to an auditor client workstation a checklist appropriate to the selected audit type. (7) The auditor uses the checklist for review of the loan by answering checklist questions for determining checkpoints. (8) Using the checklist and either paper, microfilmed, or scanned documents in the loan or loan servicing files, the auditor may find exceptions when one or more items cannot be answered yes and must be answered no. (9) The system uses the checklist and specifically the checkpoints within them to calculate an Exception Rate, and provide detailed reporting of exception significance, providing the ability to study trends and risk assessment of operations.

Another disclosed embodiment in the Acosta reference is a computer-assisted method for auditing loan portfolios and loan servicing portfolios of a plurality of types, comprising: (1) storing on a server a computer record for each loan in a portfolio; (2) storing rules on the server which comprise each current and historical legal regulation, and any investor-specific parameters applicable to each type of loan; (3) storing on the server a set of selectable audit types; (4) storing on the server a set of questions to determine compliance with each regulation or parameter, each question keyed to one or more audit types; (5) periodically adding questions to the set of questions as new regulations or parameters are promulgated; (6) storing on the server a set of sampling criteria comprising historical error rates, confidence intervals and precision; (7) automatically selecting an audit sample subset of records according to one or more selected audit type and sampling criteria; (8) automatically creating and transmitting to an auditor workstation an audit sample subset of records and checklist questions keyed to the selected audit type; (9) storing auditors answers to the checklist questions, including any exception, in an audit trail

database on a server; (10) storing any auditor recommendations pertaining to any of the exceptions in the audit trail database; and (11) automatically generating management reports comprising the sampling criteria, an exception rate pertaining to the subset, a list of any loans in the subset which have exceptions and the exceptions pertaining to each such loan, and any recommendations for cure of each type of exception found in the sample subset.

In reference to column 4, lines 51-66 of Acosta,

“There are typically at least 3,000 unique questions in the list from which a checklist for a particular type of audit is constructed by the system. Questions are added or inactivated each time a legal regulation, investor requirement, or policy reason requires it. For each question in the list, a date field, an audit type field, and an exception statement are provided. Thus the questions are in effect rules which are called up when an included type of audit is requested, but are otherwise not called up so they are not included in the questionnaire when inappropriate for the selected audit”.

“Upon selection of the audit’s criteria and sampling criteria, the software program controlling the computer processor on the server generates an audit sample subset of loan records from the full set of records and transmits an appropriate file to the workstation of the auditor”.

The questions used to generate an auditor’s checklist are considered to be “rules”. Apparently the system or the auditor is not capable of processing the full set of loan records in a loan portfolio, since only a predetermined set of loans are audited.

It is notable that in column 5, lines 14-28 of Acosta:

“Based on the legal regulations which apply to each loan or loans servicing record, either current regulations or historical regulations, investor-specific parameters and other criteria are referred to by the processor in generating a checklist. The checklist is customized to the aforementioned criteria, regulations, and parameters. In the prior art, standard checklists were used for any audit, and it was sometimes up to the auditor to decide which of the questions in the standard checklists applied to a particular type of audit being conducted as well as any investor-specific parameters to be considered. The present invention has an advantage over the prior method in that it insures that all questions pertaining to the type of audit being conducted by the auditor are answered, so that a statistically accurate error rate can be determined”.

This passage describes a checklist that an auditor must use to manually audit loan records.

Furthermore, in column 5, lines 59-63 of Acosta:

“Using the checklist and either paper or microfilm or scanned documents in the loan or loan servicing files, the auditor may find exceptions when one or more of the checklist items cannot be answered yes and must be answered no”.

And in column 10, lines 1-7 of Acosta:

“The records can include both alphanumeric data as well as images of loan documents which may have been scanned and stored in the system’s memory so that when the auditor’s client workstation calls up a loan record, it can also call up the graphical images of the original loan documentation which are typically used by the auditors in performing their checklist function”.



Using paper, microfilmed or scanned documents prevent this system from being completely automated, since the content of the various loan file variables are not in a form capable of being processed and manipulated by being entered into computer-implemented mathematical equations in a computer system. Moreover, storing current legal regulations and historical legal regulations on the computer system in scanned or alphanumeric form enables an auditor to view and read these document images at a workstation, but does not render these documents capable of automatically determining whether a loan file is compliant with these legal regulations. Although there is no disclosure of how the questions for generating an auditor's checklist are derived from the legal regulations, since the numerical and logical requirements in the legal regulations are not in a form readily processed and manipulated by a computer, being either scanned, microfilmed or alphanumeric format, generating an auditor's checklist would necessarily have to be manually performed at one of the workstations by a user viewing images of the legal regulations.

***B. Ascertaining the Differences between the Prior Art and the Claims in Issue***

While Applicant's invention is a system and method for automatically assessing whether a loan data file is in compliance with regulatory requirements that comprises computer-implemented step, the Acosta reference describes computer-assisted procedures for an auditor to use in auditing a sample subset of loan records by answering "yes" or "no" to computer selected checklist questions and using the checklist results for determining an audit result. Every step of applicant's method claims is performed by a computer executing programmed instructions that implement compliance rules. Some of the steps of the disclosed Acosta reference are performed by a computer and some of the steps are performed by users at workstations. Furthermore, there is no obvious or inherent similarity between all the steps of applicant's invention and that

disclosed in the Acosta reference. The differences between applicant's invention and that disclosed in the Acosta reference are distinguishable by comparing the elements of applicant's independent claims with the comparable elements disclosed in the Acosta reference.

The elements of independent claim 1 are incorporated as the same or similar limitations into independent claims 2, 22, 25 and 43. Therefore the discussion below regarding elements of applicant's independent claim 1 applies equally to independent claims 2, 22, 25 and 43, and is not repeated for these claims in the interests of brevity. Furthermore, the claims depending from these independent claims incorporate by reference the elements of the dependent claim on which they depend, while added further novel and nonobvious limitations to the independent claims. Therefore, a discussion of the limitations of these dependent claims will also not be repeated here in the interests of brevity.

*First Element of Applicant's Claim 1*

The first element of applicant's claim 1 recites:

“allowing a user to display, enter and edit loan audit compliance data comprising compliance base rule data elements, and storing the loan audit data in a loan database in a computer system;”

The loan compliance data in applicant's claim is a loan data file containing multiple data elements capable of being entered computer-implemented mathematical equations and referred to as compliance base rule data elements that are represented and correspond to compliance base rules variables in the compliance rules. Items such as prepaid interest or the sum of broker fees can be represented and stored as compliance base rule variables. See page 10, lines 3-9 of applicant's application as filed. To determine a compliance result, the compliance base rule data elements from a loan data file are loaded into corresponding compliance base rule variables of

the compliance rules, and the compliance rule computer code is executed to determine a compliance result. Column 2, lines 13-17 of the Acosta reference recites:

“In another aspect, the invention comprises computer-assisted method of auditing loan portfolios and loan servicing portfolios wherein loans are of a plurality of types comprising the steps of storing on a server a computer record for each loan portfolio; storing on the server rules which ...”

There is no disclosure here as to the nature of the computer record being stored. However, column 5, lines 59-63 of Acosta recites:

“Using the checklist and either the paper, or microfilm, or scanned documents in the loan or loan servicing files, the auditor may find exceptions when one or more of the checklist items cannot be answered yes and must be answered no.”

Further, column 10, lines 1-7 of Acosta recite:

“The records can include both alphanumeric as well as images of loan documents which may have been scanned and stored in the system’s memory so that when the auditor’s client workstation calls up a loan record, it can also call up the graphical images of the original loan documentation which are typically used by the auditors in performing their checklist function.”

Applicant’s compliance loan data file is a computer data file containing identifiable compliance base rule data elements that may be loaded into the associated compliance base rule variable of a compliance rule, while the loan documents disclosed in the Acosta reference are images of the loan documents. The significance of this difference is that the content of applicant’s loan data files are identifiable data elements that may be parsed, manipulated and operated on by programmed instructions in a computer and capable of being entered into computer-

implemented mathematical equations, whereas the content of a graphical image file disclosed in the Acosta reference offers no such capability, since they do not contain identifiable data elements that may be parsed, manipulated and operated on by programmed instructions in a computer. The graphical loan documents disclosed in the Acosta would not enable Applicant's invention to function as claimed, since it would not allow entry of loan data into the compliance rules by programmed instruction in a computer.

*Second Element of Applicant's Claim 1*

The second element of applicant's claim 1 recites:

“allowing a user to interactively build loan compliance rules comprising computer-implemented mathematical equations using compliance base rule variables and algebraic operands that are derived from and represent the government loan lending and licensing requirements, and storing the loan compliance rules in a loan compliance rules database in the computer system;”

The loan compliance rules in applicants claim are computer-implemented mathematical equations that include algebraic operands and compliance base rule variables that are populated by compliance base rule data elements from loan audit compliance data when an audit request is initiated. The loan compliance rules are derived from and represent the government loan lending and licensing requirements that are imposed on lending entities by government requirements. For example, there may be a maximum annual percentage interest rate (APR) requirement for a particular loan or group of loans. See page 10, lines 9-22 of applicant's application as filed. To determine a compliance result, the compliance base rule data elements from a loan data file are loaded into corresponding compliance base rule variables of the compliance rules, and the

compliance rule computer code is executed to determine a compliance result. Column 2, lines 13-27 of the Acosta reference recites:

“In another aspect, the invention comprises computer-assisted method of auditing loan portfolios and loan servicing portfolios wherein loans are of a plurality of types comprising the steps of storing on a server a computer record for each loan portfolio; storing on the server rules which comprise each current and historical legal regulation and any investor-specific parameter applicable to each type of loan; storing on the server a set of selectable audit types; storing on the server a set of questions to determine compliance with each regulation or parameter, each question keyed to one or more audit types; periodically adding questions to the set of questions as new regulations or parameters are promulgated, storing on the server a set of sampling criteria comprising historical error rates, confidence levels, and precision; automatically selecting an audit sample subset of records ...”

There is no disclosure in this cited passage as to the nature of the set of questions to determine compliance. However, column 4, lines 51-66 of the Acosta reference recites

“There are typically at least 3,000 unique questions in the list from which a checklist for a particular type of audit is constructed by the system. Questions are added or inactivated each time a legal regulation, investor requirement, or policy reason requires it. For each question in the list, a date field, an audit type field, and an exception statement are provided. Thus the questions are in effect rules which are called up when an included type of audit is requested, but are otherwise not called up so they are not included in the questionnaire when inappropriate for the selected audit”.

“Upon selection of the audit’s criteria and sampling criteria, the software program controlling the computer processor on the server generates an audit sample subset of loan records from the full set of records and transmits an appropriate file to the workstation of the auditor”.

Note that “Thus the questions are in effect rules which are called up when an included type of audit is requested...” Although the questions may be derived from legal regulations or investor requirements, as noted above in relation to the first element of applicant’s claim 1, the questions or rules” require a “yes” or a “no” answer. There is no such limitation in applicant’s claims. Applicant’s claim element includes “loan compliance rules comprising computer-implemented mathematical equations using compliance base rule variables and algebraic operands”, while the “rules” disclosed in the Acosta reference are set of questions that require a binary “yes” or “no” answer to each question. Furthermore, the result of applying mathematically-based rules as claimed by applicant to automatically determine a loan audit compliance result may include various numerical results rather than a binary “yes” or “no” result. Note that the term “checklist” is used in the Acosta disclosure to describe a multitude of “questions”, as indicated by the heading of Table 2 in column 6 of the Acosta disclosure.

Another significant difference between applicant’s claimed invention and the Acosta disclosure is that the Acosta disclosure requires the use of sampling and statistics for determining compliance of a set of loan documents, presumably because of the inherent major effort required to audit each loan in a full set of records using the computer-assisted method disclosed in Acosta. There is no such limitation in Applicant’s claimed invention. As disclosed in the cited Acosta passage above, “sampling criteria” is used by software program that “generates an audit sample subset of loan records from the full set of records and transmits an appropriate file to the

workstation of the auditor.” In considering the use of sampled subsets of loan records, column 5, lines 20-29 of the Acosta disclosure recites:

In the prior art, standard checklists were used for any audit, and it was sometimes up to the auditor to decide which of the questions in the standard checklists applied to a particular type of audit being conducted as well as any investor-specific parameters to be considered. The present invention has an advantage over the prior method in that it insures that all questions pertaining to the type of audit being conducted by the auditor are answered, so that a statistically accurate error rate can be determined”.

There is no requirement or limitation in Applicant’s claimed computer-implemented method for a sample subset of loan records from the full set of records when auditing a full set of loan records. Because of the requirement for sampling a subset of loan records in the Acosta disclosure, statistics must be used to predict the error rate of a full set of loan records. There is no such limitation or requirement in applicant’s claimed computer-implemented method. Since applicant’s claimed compliance result is automatically generated by a computer-implemented method, it is inherently fast and does not require a “sampled subset” or a predetermined “sampling criteria” so that a “statistically accurate error rate can be determined”.

Applicant’s claimed computer-implemented method is capable of processing a loan file in a time interval that is typically within several seconds, so it provides the inherent capability of auditing every loan file in a full set of loan records.

*Third Element of Applicant’s Claim 1*

The third element of applicant’s claim 1 recites:

“responding to a loan audit request including retrieving the loan compliance rules from the loan compliance rules database, retrieving the loan audit data from the loan data database, applying the loan compliance rules to the loan audit data by inserting the compliance base rule data elements from the loan audit data into the compliance base rule variables of the compliance rules for determining a loan audit compliance result;”

The step of applying the loan compliance rules to the rule audit data by inserting the compliance base rule data elements from the loan audit data in a loan file into the compliance base rule variables of the compliance rules for determining a loan audit compliance result is carried out by the loan audit engine 12 and the rule interpretation and calculation engine 14 shown in Figure 1, and the loan audit engine 12 shown in Figure 2. These functionalities are described on page 9, line 20 through page 10, line 12 of applicant’s specification as filed. Column 2, lines 20-37 of the Acosta reference recite:

“storing on the server a set of questions to determine compliance with each regulation or parameter, each question keyed to one or more audit types; periodically adding questions to the set of questions as new regulations or parameters are promulgated, storing on the server a set of sampling criteria comprising historical error rates, confidence levels, and precision; automatically selecting an audit sample subset of records according to one or more selected audit types and applicable sampling criteria; automatically creating and transmitting to an auditor client workstation the audit sample subset of records and a checklist of questions keyed to the selected audit type; storing an auditor’s answers to the checklist questions, including any exceptions, in an audit trail database on a server; storing any auditor recommendations pertaining to any of the exceptions in the audit trail database; and automatically generating management reports comprising ...”



Column 5, lines 52-63 of the Acosta disclosure recite:

“Therefore, the checklist is prepared by the system for the auditor to use during the review, and the checkpoints or items on the checklist are particular to the sample being reviewed and are the correct currently applicable ones based on current or applicable regulations and other rules. Although the active checkpoints on a checklist may vary, the historic information for that checkpoint is not lost.”

“Using the checklist and either paper, or microfilm, or scanned documents in the loan or servicing files, the auditor may find exceptions when one or more of the checklist items cannot be answered yes and must be answered no.”

As discussed above, the computer-assisted method of Acosta relies on an auditor to answer selected sets of questions that require a “yes” or “no” answer in determining compliance of a subset of selected loan files from a set of loan files. Acosta further relies on statistical methods to predict an error rate of the set of loan files based on the error rate of a sampled subset of loan files. The disclosed computer assisted method is limited to auditing a selected subset of loan files selected from a full set of loan files, presumably because of limitations of the method. Applicant’s computer implemented claims and disclosure suffer from no such limitation, and are capable of auditing a full set of loan files without the need to determine a statistically significant subset of loan files to audit, or to base an error rate on statistical predictions. Furthermore, since Acosta relies on graphic images of loan files and other documents, the disclosed method is not capable of implementing applicant’s claim elements of extracting compliance base rule data elements from loan audit data files, applying the loan compliance rules to the loan audit data by inserting the compliance base rule data elements from the loan audit data into the compliance base rule variables of the compliance rules for determining a loan audit compliance result.

*Fourth Element of Applicant's Claim 1*

The fourth element of applicant's claim 1 recites:

"notifying a user of the determined loan audit compliance result."

As a final element of the applicant's computer-implemented method, a user is notified of the compliance result. Column 2, lines 48-56 of the Acosta reference recites:

"The hyperlinks to the management reports can be automatically e-mailed to appropriate managers, optionally along with a time limited password, and optionally sending reminders to managers to request a response, or notifications of past due responses. The audit reports containing the exceptions can be stored in an audit trail record, and managers' responses to the exceptions can also be stored in that audit trail record."

Column 8, lines 51-67 of the Acosta reference recites:

"The auditor may make recommendations other than standard, stored recommendations. All the recommendations and exceptions are stored in the computer system and are processed to generate management report. Management reports can comprise the sampling criteria, and exception rate pertaining to the subset, a list of any loans in the subset which have exceptions and the exceptions pertaining to each such loan, and any recommendations for cure of each type of exception found in the sample subset. This automatically generated the management report can be automatically e-mailed to appropriate managers. The report can be in hypertext markup language (HTML) and the e-mail can include hyperlinks to the reports. The manager can be given an automatically generated temporary password to allow access to the report, and the

expiration date of the password can act as a time limit for the manager's response to the report."

There is no suggestion in applicant's claimed invention of management reports or exception rates, which are necessarily generated by an auditor. These appear to be embellishments that bear no relationship to applicants claimed invention. There is also no disclosure in the Acosta reference of notifying a user of determined loan audit compliance result.

### ***C. Resolving the Level of Ordinary Skill in the Pertinent Art***

The level of ordinary skill in the pertinent art would be possessed by a software developer employed in the mortgage industry, employed by either with a primary lender involved in loan origination or with a secondary lender involved in purchasing sets of closed loans in the secondary market.

### ***D. Evaluating Evidence of Secondary Considerations***

#### **Commercial Success**

The declaration shown in Attachment 2 provides evidence in the referenced Exhibits A-E of the success of applicant's claimed invention in the marketplace. As shown in Exhibit A of Attachment 2, Mavent has been named by the editors of *Mortgage Technology* Magazine as one of the top 50 technology providers to the mortgage industry, based on providing automated regulatory compliance solutions to the mortgage industry's largest originators and investors. The core technology in Mavent's automated compliance solutions is based in the claims in applicant's application. The Exhibits show the commercial success of Mavent's automated compliance solutions being used by the largest mortgage originators in the United States. Exhibit D of Attachment 2 shows an article entitled "Automating the Law" in *Mortgage Technology* magazine that describes the Mavent regulatory compliance Expert system, which is

based on applicant's claimed invention. The Mavent Expert system is able to render a compliance decision in less than 10 seconds, enabling users to review nearly 100% of their loan files, rather than performing audits on a sample basis. This compares with at least several hours to perform a manual audit, such as the system disclosed in the Acosta reference. Exhibit E of Attachment 1 shows additional clients that are making use of the Mavent automated compliance solution. The first article of March, 2007 concerning Yale Mortgage Company notes the Mavent Expert System has conducted more than 18 million compliance reviews to date for some of the industry's largest originators and purchasers of mortgages. The commercial success of the Mavent automated compliance solution based on applicant's claimed invention is also evidence of a long felt need in the mortgage industry for an automated solution in comparison to the traditional time-consuming and resource-intensive manual auditing process as exemplified by the Acosta reference disclosure.

#### Teaching Away

In the inventor's Declaration under 37 CFR 1.131 of Attachment 1, the inventor noted that the most difficult problem in reducing his invention to practice was inventing a methodology for converting the legal regulations and laws into computer readable and executable code. Applicant's solution resulted in computer-implemented mathematical equations using compliance rule variables and operands derived from and representing government loan lending and licensing requirements for determining compliance. Thus, applicant's methodology enabled an automated system using his solution to determine compliance in less than ten seconds. In comparison, Acosta et al. relied on augmenting known methods for manually determining compliance with computer selected checklist questions. Since there was only a three and a half month difference between the file date of the Acosta reference and the present application, the

technology known to one skilled in the relevant art would have been commonly known by Acosta et al. as well as the applicant of the present application. Therefore, the Acosta of selecting groups of checklist questions requiring a manually selected yes or no answer by an auditor, while reviewing an image of a loan file on a workstation, teaches away from applicant's computer-implemented method of equations populated with loan file data elements that enable a completely automated solution.

***Considering the Invention as a Whole***

In any analysis of the rejection of claims under 35 U.S.C. § 103(a), the statute requires that obviousness be analyzed based on “the subject matter as a whole”, which means based on an analysis of the claim in its entirety. Claim 1 does not simply generate a selected set of questions for a sampled subset of loan files from a complete set of loan files for an auditor to answer while viewing a scanned copy of a loan file on a workstation, and then having the computer determine a prediction of an error rate based on the sampled result. While there is no apparent disclosure in the Acosta reference of how the checklist questions are created, the auditor checklist questions in Table 2, columns 6 and 7 of the Acosta reference and the auditor recommendations in Table 3, column 7 and 8 of the Acosta reference bear no relationship to Applicants populating computer-implemented equations with data elements from loan files for computing a compliance result. The Acosta reference merely discloses a manual auditing method with the use of checklists that has been traditionally used for years in the mortgage industry, with a little augmentation from a computer. The only innovative feature of the Acosta reference over the prior art appears to be the use of a computer to determine a sampled subset of loans files from a full set of loans and means for calling up a selected set of checklist questions to answer. Applicant's claimed invention is void of the use of these features, or the use of manual auditing procedures.

**SUMMARY**

In summary, applicant has provided evidence to show conception and diligent reduction to practice from prior to the file date of the Acosta reference to constructive reduction to practice by filing the present application. In an alternative, the analysis detailed above rebuts the assertions by the Office of obviousness of applicant's claimed invention, and substantiate the novelty and nonobviousness of claims 1-46 under 35 U.S.C. § 103(a) as being patentable over the reference of Acosta et al, U.S. Patent No. 6,643,625. Since the analysis above shows the nonobvious features of applicant's claimed invention in view of the Acosta disclosure, the Office has failed to establish a case for obviousness. Applicant requests reversal of all rejections and that the application be allowed to issue.

Respectfully Submitted,

July 7, 2007  
Date

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